82-1322

No.

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA AND
ROSCOE L. EGGER, JR., COMMISSIONER OF
INTERNAL REVENUE, PETITIONERS

v.

WILLAMETTE INDUSTRIES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether disclosure of tax return information that does not explicitly identify a particular taxpayer, but which has not been amalgamated into statistical compilations, so that it remains in a form which creates a risk of association with a particular taxpayer, is barred by 26 U.S.C. 6103, and therefore "specifically exempted from disclosure by statute" within the meaning of Exemption 3 of the Freedom of Information Act, 5 U.S.C. 552(b)(3).

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States and Roscoe L. Egger, Jr., Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the district court (App. B, *infra*, 11a-25a) is reported at 530 F. Supp. 904. The judgment of the district court (App. C, *infra*, 26a-27a) is unreported. The opinion of the court of appeals (App. A, *infra*, 1a-10a) is reported at 689 F.2d 865.

JURISDICTION

The judgment of the court of appeals was entered on October 7, 1982 (App. A, *infra*, 1a). By order dated December 27, 1982, Justice Rehnquist extended the time within which the government may file a petition for a writ of certiorari to and including February 7, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The pertinent provisions of the Freedom of Information Act (5 U.S.C. (& Supp. V) 552) and Section 6103 of the Internal Revenue Code (26 U.S.C.)[1] are as follows:

5 U.S.C. 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

* * * * *

(b) This section does not apply to matters that are—

(3) specifically exempted from disclosure by statute * * * provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

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[1] For the convenience of the Court, we have reproduced the entire text of Section 6103 of the Internal Revenue Code of 1954 at App. D, *infra*, 28a-77a.

26 U.S.C. (& Supp. V) 6103.

SECTION 6103 [as amended by Section 1202 (a)(1), Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1667 and by Section 701, Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 340]. Confidentiality and disclosure of returns and return information.

(a) *General Rule.*—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

* * * * *

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) *Definitions.*—For purposes of this section—

* * * * *

(2) *Return information.*—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the

> determination of the existence, or possible existence, or liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and
>
> * * * * *
>
> but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. * * *

STATEMENT

Respondent is a timber producer and manufacturer of wood and forest products (App. A, *infra*, 2a; App. B, *infra*, 11a). It brought this suit under the Freedom of Information Act, 5 U.S.C. (& Supp. V) 552, in the United States District Court for the District of Oregon, to compel disclosure of various types of documents held by the Internal Revenue Service, dealing with the Service's treatment of the timber industry. The litigation ultimately focused on two types of documents from several different geographic areas for the years 1973-1976 (App. A, *infra*, 3a).[2] The first type of document sought by respondent was engineering and valuation reports (EVRs) and related background material, which are prepared by Internal Revenue Service foresters during a disputed audit of a particular taxpayer and reflect the Service's valuation of the timber owned by that specific taxpayer. The EVRs generally contain the names and addresses of the audited taxpayers,

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[2] Respondent also sought IRS administrative manuals and instructions regarding timber valuation. The Service released the administrative manuals and instructions (App. A, *infra*, 3a; App. B, *infra*, 12a n.1).

the volume of each species of timber involved in each case, land value allocations, the fair market value determined by the Internal Revenue Service for each species, the valuation dates, and the specific area in which the subject timber was located (App. A, *infra*, 2a; App. B, *infra*, 12a, 22a).

The second type of document was private timber sales data, which are also compiled during an audit of a taxpayer. Unlike the EVRs, which list valuations of timber owned by the audited taxpayer, the private timber sales data are records of comparable sales by other taxpayers and are used by IRS auditors as references to determine the market value of the audited taxpayer's timber. This information is derived from data supplied by various sources including Forms T filed with the Internal Revenue Service by taxpayers who have sold timber during the taxable years. These Forms T contain: the identity of the parties to a particular timber transaction; the character and quality of the timber as determined by species, age, size, condition, etc.; the quantity of timber per acre, the total quantity involved, and the location of the timber in question with reference to other timber; the accessibility of the timber, *i.e.*, its distance from a common carrier, and the topography and other features of the ground upon which the timber stands and over which it must be transported in the process of exploitation; the probable cost of exploitation and the state of industrial development of the locality; and the freight rates by common carrier to important markets. The Internal Revenue Service foresters refer to this information when examining comparable purchases and sales of timber by those taxpayers whose transactions are under audit. As a result, many audit files contain private sales data about sales of timber by unrelated third parties, derived from the Forms T filed by such parties (App.

A, *infra*, 2a; App. B, *infra*, 12a, 22a-23a; App. C, *infra*, 26a-27a).

The district court granted summary judgment to respondent. It held that respondent was entitled to disclosure of both the EVRs and private sales data (App. B, *infra*, 12a-25a). The court conditioned disclosure upon deletion of details apparently identifying a particular taxpayer, *i.e.*, the deletion from the EVRs of the names of the taxpayers and the total volume of each tract, and the deletion from the private sales data of the names of the taxpayers, the purchasers of the timber, and the total volume of the timber (*id.* at 26a-27a). In so ruling, the court rejected the government's argument that the material sought by respondent was "return information" barred from disclosure under 26 U.S.C. 6103, and therefore "specifically exempted from disclosure by statute" under Exemption 3 of the Freedom of Information Act. As the court viewed the matter, its mandated deletions from the material brought the documents outside the Section 6103 definition of "return information" as "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer" (App. A, *infra*, 15a-22a).

The court of appeals affirmed (App. A, *infra*, 1a-10a). It agreed that Section 6103 of the 1954 Code is an Exemption 3 statute within the meaning of the Freedom of Information Act. It held, however, that the EVRs and private sales data, with the deletions ordered by the district court, were not "return information." Once such deletions are made, the court ruled, the documents become "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer" within the meaning of Section 6103(b)(2)(B). In

so holding, the court adhered to its prior decision in *Long* v. *Internal Revenue Service*, 596 F.2d 362 (1979), cert. denied, 446 U.S. 917 (1980).

REASONS FOR GRANTING THE PETITION

In holding that tax return information concerning particular taxpayers, with explicit references to those taxpayers deleted, is not barred from disclosure by 26 U.S.C. (& Supp. V) 6103, even though such information remains in a form that nevertheless could identify a particular taxpayer, the decision below squarely conflicts with *King* v. *Internal Revenue Service*, 688 F.2d 488 (7th Cir. 1982). There, shortly before the decision in the instant case, the Seventh Circuit ruled that virtually identical material in a different business context is barred from disclosure under 26 U.S.C. (& Supp. V) 6103, unless its form is changed by amalgamating it with other return information to form statistical compilations or tabulations, which cannot be associated with or otherwise directly or indirectly identify a particular taxpayer.

Although the *King* decision was called to the attention of the court below, it declined to address it. Instead, the court simply adhered to its earlier construction of Section 6103(b)(2)(B) in *Long* v. *Internal Revenue Service*, 596 F.2d 362 (1979), cert. denied, 446 U.S. 917 (1980), and that adopted in *Neufeld* v. *Internal Revenue Service*, 646 F.2d 661 (D.C. Cir. 1981),[3] both of which the *King* court explicitly rejected (688 F.2d at 490 n.1). Thus, the courts of appeals are in disagreement on an important question of tax administration involving the scope of the protection enacted by Congress in Section 6103 to ensure the privacy and confidentiality of tax return information entrusted to the Internal Revenue

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[3] Accord: *Moody* v. *Internal Revenue Service*, 654 F.2d 795, 797-798 (D.C. Cir. 1981).

Service. This Court should grant certiorari and establish a uniform national rule with respect to whether such tax return information is barred from disclosure by 26 U.S.C. (& Supp. V) 6103, and therefore "specifically exempted from disclosure by statute" within the meaning of Exemption 3 of the Freedom of Information Act.

1. Millions of individuals and business entities subject to federal tax are required to provide highly confidential information to the Internal Revenue Service to enable it to discharge its statutory obligation to assess and collect taxes. This information, and the documents in turn created and collected by IRS personnel, are crucial to the effective administration of the revenue laws. In order to promote the continued submission by taxpayers of such information with a minimum of governmental compulsion, Congress added Section 6103 to the Internal Revenue Code of 1954 to guarantee the confidentiality of tax return information. Like the statutory prohibitions against the disclosure of raw census data considered by the Court in *Baldrige* v. *Shapiro*, 455 U.S. 345 (1982), Section 6103 of the Code bars the disclosure of such material by the Internal Revenue Service, except in carefully defined and limited circumstances. Violations of this public trust are subject to severe sanctions. Section 7213 of the 1954 Code (App. D, *infra*, 73a-75a) provides that unauthorized disclosure of return information is a felony punishable by a five-year prison term and a $5,000 fine, and, if the offender is a federal employee, he is subject to mandatory dismissal.[4]

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[4] Civil damages are also available. See Section 7431 of the 1954 Code (App. D, *infra*, 76a-77a), added by Section 357 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 645, repealing Section 7217 of the Code.

Section 6103(b)(2)(A) (page 3, *supra*) defines the term "return information" in the broadest possible language. It sets forth an exhaustive list of items, including the taxpayer's identity, nature, source or amount of income, payments, credits deductions, etc., required to be reported. The plain language of the provision supports the construction that the statute prohibits the disclosure of much more than a "taxpayer's identity" because that is the first of the many enumerated items comprising the definition of "return information." As the Seventh Circuit observed in *King* v. *Internal Revenue Service*, *supra*, 688 F.2d at 491, "[i]f Congress had intended only taxpayer-identifying information to be exempt, it could have achieved that result with a much simpler statute specifying merely that all non-identifying information is disclosable. Congress chose not to go that route." Accord: *Cliff* v. *Internal Revenue Service*, 496 F. Supp. 568, 574 (S.D. N.Y. 1980). After the detailed list of items comprising "return information," the statute provides an exception for "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer."

Just as the initial list of items is broadly cast to encompass in the definition of "return information" the gamut of items set forth on a tax return and the ensuing determinations that may be made by the Internal Revenue Service, the formulation of the statutory exception—known as the Haskell amendment—likewise implements Congress' intent to guarantee the confidentiality of such material. Hence, the term "return information" does not include "data in a form" which "cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer."

Thus, the plain language of the statute confirms that the mere deletion of a taxpayer's name or other explicit identifying details from a document that would otherwise constitute "return information" does not expose the document to disclosure. The remaining information may nevertheless be "associated with, or otherwise identify, directly or indirectly a particular taxpayer." Indeed, the use of the statutory phrase "data in a form" in conjunction with the language protecting against direct or indirect association or identification with a particular taxpayer, suggests that Congress meant to exclude from the disclosure prohibition only information that is changed in form, *i.e.*, likely rendered anonymous by amalgamating it with return information concerning other taxpayers to form "data," *i.e.*, statistical compilations. Simply put, "the Haskell amendment provided only for the disclosure of statistical tabulations which are not associated with or do not identify particular taxpayers." *King* v. *Internal Revenue Service*, *supra*, 688 F.2d at 493.

2. What is more, the structure of Section 6103 as a whole reinforces the foregoing reading of the statute and the Haskell amendment. Section 6103(f)(1) of the 1954 Code, dealing with disclosure to committees of Congress, supports our submission that "return information" is a broader concept than taxpayer-identifying information.

Section 6103(f)(1) provides:

> (f) *Disclosure to Committees of Congress*—
>
> (1) *Committee on Ways and Means, Committee on Finance, and Joint Committee on Taxation* —Upon written requests from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of

> the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

As the foregoing statutory language makes clear, there are two types of return information that can be made available to Congress. First, information that identifies a particular taxpayer can be furnished to the committee only when sitting in closed executive session. But even when the return information contains no such identification, Congress nevertheless believed it required particular statutory authorization to obtain such documents. If, however, the decision below correctly concluded that tax return information (as opposed to amalgamated statistical compilations) with the taxpayer's name or other identifying details deleted can be publicly disclosed, the separate statutory authorization prescribed by Section 6103(f)(1) would be largely superfluous.

Long v. *Internal Revenue Service*, *supra*, the prior decision construing the Haskell amendment to which the court below adhered, erroneously brushed aside the relevance of Section 6103(f)(1). Although the court in *Long* acknowledged that our interpretation of the Haskell amendment was "quite reasonable" (596 F.2d at 368), it nevertheless concluded that "Given the choice between adopting the explicit language of one section and an inconsistent implication of another, we chose the explicit language [of Section 6103(b)]" (*ibid.*). But *Long* rests upon the erroneous premise that the language of the Haskell

amendment authorizes disclosure of "return information" in the absence of explicit reference to a particular taxpayer. Such an interpretation, as we have pointed out (pages 9-10, *supra*), is inconsistent with the plain language of the statute. A harmonious construction of the statute as a whole demonstrates that Congress intended to bar public disclosure of all "return information" that could possibly be associated with, or otherwise identify, *directly or indirectly*, a particular taxpayer. Hence, the Seventh Circuit in *King* correctly "dismiss[ed] the *Long* court's unpersuasive interpretation of the effect of section 6103 (f) (1)" (688 F.2d at 492).

3. Under the decision below, a third party, such as respondent, could carefully narrow its request for general information as to taxpayers and obtain return information that could be "associated with, or otherwise identify, directly or indirectly" particular taxpayers. Indeed, the facts of this case graphically illustrate the potential invasion of taxpayer's privacy authorized by the court below. The forestry industry is highly specialized, and respondent is a major member of that industry. Valuation of lumber, like any other commodity, requires examination of comparable data. Neither a court nor the Internal Revenue Service is in a position to appraise respondent's ability to correlate the comparable sales and valuation data sought by respondent with respect to its specific competitors despite the deletion of all apparent taxpayer-identifying information. Contrary to the assumption of the court below in *Long* that "there is no threat to taxpayer privacy" (596 F.2d at 368; footnote omitted) upon the disclosure of such information, the same potential invasion of privacy exists with respect to all disclosures of "return information" with the taxpayer's name or other identifying details deleted.

As, the Seventh Circuit in *King* correctly stated (688 F.2d at 491-492):[5]

> Even if the taxpayer's name is deleted * * *, the industry discussed in the documents here is sufficiently specialized that the plaintiff might well be able to deduce * * * which taxpayer's return has been disclosed. Allowing the determination by the district court on an ad hoc basis of whether an FOIA requester has sufficient data to make such an association would substantially undercut the protective purpose of section 6103(b)(2). The district court, like the I.R.S., cannot be aware of how much information the requester already possesses to facilitate the association.

4. Finally, to the extent that there is legislative history with respect to the Haskell amendment, it shows that the statute permits only the disclosure of statistical tabulations, which cannot be associated with or do not identify particular taxpayers. The amendment was introduced during the Senate floor debate on the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, and adopted without debate or discussion beyond Senator Haskell's remarks. The amendment was not discussed either in the House or Senate reports on the Tax Reform Act of 1976 (see H.R. Rep. No. 94-658, 94th Cong., 1st Sess. (1975); H.R. Rep. No. 94-1380, 94th Cong., 2d Sess. (1976); and S. Rep. No. 94-938, 94th Cong., 2d Sess. (1976)) nor in either conference committee report (see H.R. Conf. Rep. No. 94-1515, 94th Cong., 2d Sess. (1976); S. Conf. Rep. No. 94-1236, 94th Cong., 2d Sess. (1976). In introducing the provision, Senator Haskell explained (122 Cong. Rec. 24012 (1976)):

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[5] The documents requested in *King* concerned likewise highly technical tax information directly concerning taxpayers in the trucking industry. See 688 F.2d at 489-490.

> [t]he purpose of this amendment is to insure that statistical studies and other compilations of data now prepared by the Internal Revenue Service and disclosed by it to outside parties will continue to be subject to disclosure to the extent allowed under present law. Thus the Internal Revenue Service can continue to release for research purposes statistical studies and compilations of data, such as the tax model, which do not identify individual taxpayers.
>
> The definition of "return information" was intended to neither enhance nor diminish access now obtainable under the Freedom of Information Act to statistical studies and compilations of data by the Internal Revenue Service. Thus, the addition by the Internal Revenue Service of easily deletable identifying information to the type of statistical study or compilation of data which, under its current practice, has been subject to disclosure, will not prevent disclosure of such study or compilation under the newly amended section 6103. In such an instance, the identifying information would be deleted and disclosure of the statistical study or compilation of data be made.[6]

Hence, the concluding clause added by Senator Haskell to Section 6103(b)(2) does not alter the fundamental statutory definition of "return information." That clause necessarily contemplates that return information, to be disclosed, must both: (1) be in a different form, *i.e.*, amalgamated with other data; and (2) not directly or indirectly identify the taxpayer. The purpose of the amendment is to permit the Internal Revenue Service to continue its collection

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[6] In response to the proposed amendment, Senator Long stated: "Mr. President, I will be happy to take this amendment to conference. It might not be entirely necessary, but it might serve a good purpose." 122 Cong. Rec. 24012 (1976).

and release of general statistics without running afoul of the prohibition against disclosure of "return information." The amendment does not, however, permit the release of any of the items comprising the statutory definition of "return information" in an unchanged form, such as that appearing in the EVRs and private sales data, which could possibly be associated with a particular taxpayer.

The fundamental error of the court below, first articulated in its prior *Long* decision,[7] was to estab-

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[7] Our petition for certiorari (No. 79-1269, 1979 Term) in *Long* did not seek review of the Ninth Circuit's original construction of the Haskell amendment in that case. Rather, the question presented focused on whether the source documents of the IRS Taxpayer Compliance Measurement Program, used to develop audit selection criteria, were protected from disclosure under Exemption 2 or 7(E), two grounds that were not specifically raised in the lower courts. However, in our petition (at 13-14), we stated our disagreement with the court of appeals' interpretation of the Haskell amendment.

The disclosure of the documents ordered by the original *Long* decision was subsequently foreclosed by statute. See Section 701(a) of the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 340. This statute was enacted in response to *Long* v. *Bureau of Economic Analysis*, 646 F.2d 1310 (9th Cir. 1981), cert. granted, judgment vacated and remanded, 454 U.S. 934 (1981), vacated and remanded 671 F.2d 1229 (9th Cir. 1982). As the pertinent committee report (H.R. Conf. Rep. No. 97-215, 97th Cong., 1st Sess. 264 (1981)) explained:

> Present law restricts the disclosure of tax returns and return information. However, information that cannot identify any particular taxpayer is not protected under the disclosure restrictions. Because of this, questions have been raised concerning whether the IRS can legally refuse to disclose information which is used to develop standards for auditing tax returns.
>
> * * * However, it is intended that nothing in this provision [of the Economic Recovery Tax Act] be construed

lish a legal test that assumes that the disclosure of any return information is permitted as long as it does not explicitly identify a particular taxpayer. But the purpose of the amendment, as Senator Haskell explained, was to codify the Internal Revenue Service's existing practice of disclosing statistical compilations. Hence, any information which falls within the general definition of "return information" is barred from disclosure by Section 6103(b) unless it is amalgamated with other data in a statistical study, and cannot be associated either directly or indirectly, with a particular taxpayer. Especially in light of the acknowledged conflict in the circuits, the threat to the confidentiality of tax return information posed by the decision below calls for review by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 1983

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to limit disclosure of statistical data or other information * * * to the extent permitted under present law. Thus any information that is currently made available will continue to be available.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 81-3560

DC No. CV 78-336

WILLAMETTE INDUSTRIES, INC., PLAINTIFF-APPELLEE

vs.

UNITED STATES OF AMERICA, ROSCOE EGGER, Commissioner of Internal Revenue, RALPH B. SHORT, ARTURO A. JACOBS, ROBERT M. CUTTS, and ROBERT M. MCKEEVER, District of Internal Revenue Service, DEFENDANT-APPELLANTS

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Argued and submitted August 5, 1982

Decided October 7, 1982

Before: KILKENNY, SNEED, and SKOPIL, Circuit Judges

OPINION

SKOPIL, Circuit Judge:

The IRS appeals from a district court order requiring it to comply with a taxpayer's Freedom of Information Act ("FOIA") request for data from third party taxpayers' files regarding timber sales and valuation, with the taxpayers' names and total volume of timber deleted. We affirm.

I.

Appellant, Willamette Industries, a timber producer and manufacturer of wood and forest products, made a FOIA request for disclosure of documents kept by the Internal Revenue Service ("IRS"), which would show how the IRS arrives at fair market values for timber in making tax assessments for the timber harvested by appellee each year. Willamette requested administrative manuals and instructions regarding timber valuation.

Willamette also requested two types of documents, from five different geographic areas for the years 1970-1976. The first was engineering and valuation reports (EVRs), which are prepared by foresters during a disputed audit of an individual taxpayer, and reflect the valuation of the timber owned by that specific taxpayer.

The second type of documents are called private timber sales data, and are compiled during the audit of a taxpayer. Unlike the EVRs, which list valuations of timber owned by the audited taxpayer, the private timber sales data are compilations of comparable sales by other taxpayers, and are used by the auditors as references to determine the market value of the audited taxpayer's timber. These compilations are gleaned from data supplied by consultants as well as from forms filed by taxpayers who have sold timber during the taxable year. Interestingly, the IRS does not compile a centralized table of timber valuations, either from its own valuations or from comparable sales. Both the EVRs and the private timber sales data are kept only in individual audit files. Thus there is no available information about how the IRS has actually valued specific types of timber in different locations.

The IRS released only the administrative manuals, and Willamette filed suit to compel disclosure of the EVRs and private timber sales data. The IRS moved for summary judgment. The district court ordered the government to conduct a search of representative files, and to provide the general information regarding the number of files within the scope of the request, the number of files already searched, the time already taken conducting the search, and the time needed to complete the search. The government was also ordered to provide a description of all the material in the files including which parts, if any, are non-exempt, and to offer justification for continuing to withhold all information. The court also requested affidavits from IRS officers setting forth other relevant information.

After the IRS filed the requested information and affidavits, the district court calculated that the documents requested totaled 453,934 pages contained in 1,343 files. The court denied the IRS' motion for summary judgment.

Willamette filed a motion for summary judgment. Willamette reduced its original request for EVRs to the two areas of western Oregon and northern Louisiana, and only for the tax years ending in 1974, 1975 and 1976; and limited the request for private sales data to the same geographic areas for the period from June 30, 1973 to June 30, 1976. There was no recalculation of the number of pages covered by the limited request, though the number of years requested had been cut in half, and the geographic areas had been reduced from five to two.

A hearing was held on December 2, 1980. On May 28, 1981 the district court filed its opinion in favor of Willamette, holding that the documents were not

exempt under FOIA exemption 3 and that the EVRs were final opinions required to be disclosed under 5 U.S.C. § 552(a)(2)(A). Judgment was entered on July 27, 1981, ordering the IRS to release the EVRs with the taxpayers' names and total volume of each tract deleted, and to disclose the private sales data with the names of the taxpayers, the purchasers of the timber, and the total volume of timber deleted. The IRS appeals.

II.

The issues on appeal are:

1. Whether the district court's finding that the requested documents can be edited to avoid indirect identification of taxpayers is clearly erroneous, and thus the documents would be exempt from disclosure under FOIA exemption 3; and

2. Whether the district court erred in holding that the requested documents were "data" which is not exempted from disclosure by the Haskell Amendment, 26 U.S.C. § 6103(b)(2).

III.

The district court's findings of fact regarding danger of indirect identification and segregability can be overturned on appeal only if they are clearly erroneous. Fed.R.Civ.P. 52(a); *United States* v. *Missouri River Breaks Hunt Club*, 641 F.2d 689, 694 (9th Cir. 1981). The burden of proof is on the IRS to sustain its claim that the requested documents are exempt from disclosure under the FOIA. 5 U.S.C. § 552(a)(4)(B).

IV.

The Freedom of Information Act, 5 U.S.C. § 552, provides for federal agencies to disclose documents unless they fall within a specific statutory exemption. Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), permits the withholding of matters that are "specifically exempted from disclosure by statute," if the statute meets certain specified criteria.

Section 6103 of the Internal Revenue Code of 1954, 26 U.S.C. § 6103, has been held to qualify as an exemption 3 statute. *See, e.g., Long* v. *United States Internal Revenue Service*, 596 F.2d 362, 365-66 (9th Cir. 1979), *cert. denied*, 446 U.S. 917 (1980); *Chamberlain* v. *Kurtz*, 589 F.2d 827, 838-39 n.33 (5th Cir. 1979), *cert. denied*, 444 U.S. 842 (1979). Section 6103 provides detailed rules prohibiting disclosure of tax "returns" and "return information". The 1976 amendment to section 6103 (the "Haskell Amendment") provides that the term "return information" "does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer." 26 U.S.C. § 6103(b)(2).

This court has construed the Haskell amendment to mean that data that does not identify a particular taxpayer is not "return information" and thus is subject to disclosure under the FOIA. *Long* v. *Internal Revenue Service*, 596 F.2d at 368; *see also Neufeld* v. *Internal Revenue Service*, 646 F.2d 661, 665 (D.C. Cir. 1981).

The FOIA provides that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). The focus of the FOIA is infor-

mation, not documents, and the agency cannot justify withholding an entire document simply by showing that it contains some exempt material. "Non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions" such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value. *Mead Data Central, Inc.* v. *U.S. Department of Air Force*, 566 F.2d 242, 260-61 (D.C. Cir. 1977); *Neufeld* v. *Internal Revenue Service*, 646 F.2d at 666; 5 U.S.C. § 552(d).

The district court found that the requested documents could be edited and disclosed without danger of identifying the taxpayers to which the documents apply, that the government had failed to show that the documents would be meaningless after the deletions, and further found that the IRS' editing burden would not be excessive.

A review of the record reflects that the district court's findings are not clearly erroneous. The burden of proof is on the agency to show that the documents are exempt from its duty to disclose. *Ollestad* v. *Kelly*, 573 F.2d 1109, 1110 (9th Cir. 1978); 5 U.S.C. § 552(a)(4)(B). The IRS' expert testified that in most cases the engineering and valuation reports (EVRs) would not identify individual taxpayers if the total volume of timber in each tract listed was deleted. Though the expert testified that in certain circumstances a knowledgeable person in the industry might be able to identify the individual taxpayer by the location of certain tracts, no specific evidence was given as to how often this danger of indirect identification might exist. The IRS's argument that "it is simply impossible to know what informa-

tion might indirectly identify one of those specific taxpayers" is too speculative and not supported by facts.

The IRS contests the district court's finding that there is no danger of indirect identification as to the second group of documents, the compilations of timber sales data. The district court ordered the release of this data after deletion of the names of the taxpayers and the purchasers and the volumes of sale. The IRS argues that even with the volumes of sale deleted, a reader of the edited form could calculate the volumes as the forms often list the location of the tract of land, the volume of timber sold, the unit price, and the total sales price, and with this information identify the taxpayer. Our review of the private sales data compilations shows that there is little danger of such indirect identification from the edited form.[1]

The IRS also argues that the cost of editing would be extremely high and thus the district court was clearly erroneous in finding that the documents are reasonably segregable. It should be noted first that the government presented no evidence as to the number of files or pages involved in this particular re-

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[1] We note that *FBI* v. *Abramson*, 102 S.Ct. 2054 (1982), does not require a contrary result. In *Abramson*, the Supreme Court held that material originally gathered for law enforcement purposes, which is exempt from disclosure under exemption 7(C), remains sheltered by the exemption even though the material is reproduced or summarized in a new document that is prepared for a non-law enforcement purpose. Even assuming that *Abramson* might apply to exemptions other than 7(C), this decision has no impact on the present case. Here, the data gathered by the IRS was not initially gathered for an exempt purpose.

quest [2] nor specific estimates of the amount of editing required. Further, this court has already held that large costs of editing cannot per se make the request unreasonable. *Long* v. *IRS*, 596 F.2d at 367. As the IRS has the burden to demonstrate that the non-exempt portions of the documents are not "reasonably segregable," and has not given any specific evidence as to the magnitude of the cost of editing, the district court's finding cannot be held clearly erroneous.

V.

The Haskell Amendment states that the term "return information" "does not include *data* in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer." 26 U.S.C. § 6103(b)(2) (emphasis added). The IRS argues that the term "data" used here means that only compilations of data are required to be released under FOIA and that information such as the EVRs, which are extracted from individual tax returns and audit files, are not such data compilations and therefore exempt from disclosure. In *Long* v. *IRS*, *supra*, this court required disclosure of a data base utilized in the Taxpayer Compliance Measurement Program (TCMP). The IRS argues that the information required to be disclosed in *Long* were "compilations of data" and that *Long* should be limited to this situation.

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[2] The IRS in fact erroneously gives as a figure the amount of material involved before Willamette reduced its FOIA request by much more than half. The government in its reply brief disingenuously states that it used the original estimates "simply to illustrate the extent of the problem."

We refuse to so limit *Long*. *Long* does not indicate that it should be so limited. Several other courts have applied *Long* to require the release of documents relating to specific taxpayers. *Moody* v. *Internal Revenue Service*, 654 F.2d 795 (D.C. Cir. 1981); *Arthur Andersen & Co.* v. *Internal Revenue Service*, 514 F. Supp. 1173 (D.D.C. 1981). *But see Cliff* v. *Internal Revenue Service*, 496 F. Supp. 568 (S.D.N.Y. 1980).

In fact, the computer data tapes which were required to be disclosed in *Long* were not merely compilations of data but contained actual income tax returns in their entirety on an item-by-item basis, with only the taxpayers' names and addresses deleted. The information in *Long* is only a "compilation of data" because the tapes contained fifty thousand such individual tax returns, along with other audit information. *Long* v. *Bureau of Economic Analysis*, 646 F.2d 1310, 1314 n.1 (9th Cir. 1981), *vacated and remanded on other grounds*, 102 S. Ct. 468 (1981).

In any event, the information involved in this case is in effect compilations of data, compiled by the IRS from individual taxpayer returns, and does not include any actual return forms. The EVRs are reports compiled by foresters which list timber tracts, amount of timber, and fair market valuation. The second type of information, the private sales data, is a compilation of comparable sales developed from other sources, utilized by the IRS in an audit to determine market value for individual tracts. Though this information is contained in the audit file of a particular taxpayer, it is a compilation of data relating to sales by other taxpayers.

Accordingly, the district court did not err in holding that the type of information requested here is

covered by the Haskell Amendment and therefore is not exempt from disclosure.[3]

The judgment of the district court is AFFIRMED.

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[3] The IRS challenges the district court holding that the EVRs were "final opinions" and thus required to be maintained available for public inspection pursuant to 5 U.S.C. § 552(a)(2) ["reading room materials"].

We have already held that the documents are not exempt from disclosure under exemption 3, and thus they must be disclosed to the requesting plaintiffs under section 552(a)(3) as individual requested records. Whether the EVRs are final opinions is only relevant to determine if the IRS is required by the FOIA to maintain them for public inspection as "reading room materials." In the judgment prepared by plaintiff the IRS is only ordered to disclose the requested records to the plaintiffs, and there is no order that the EVRs be made available for public inspection as reading room materials. Thus, for purposes of this appeal, it is irrelevant whether the requested documents are final opinions required to be disclosed under 5 U.S.C. § 552(a)(2).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 78-336-PA

WILLAMETTE INDUSTRIES, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA and JEROME KURTZ, Commissioner of Internal Revenue, DEFENDANTS

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OPINION

PANNER, Judge:

Plaintiff, Willamette Industries, a timber producer and manufacturer of wood and forest products,

brought this Freedom of Information Act (FOIA) action to gain access to documents kept by the Internal Revenue Service, which would show how the IRS arrives at fair market values for timber in making tax assessments for the timber harvested by plaintiff each year.

Specifically, plaintiff seeks:

a) access to IRS findings as to the fair market value of timber in western Oregon and northern Louisiana, for tax years ending 1974, 1975 and 1976; and

b) access to private timber sales data compiled by the IRS or foresters, for use by the IRS as comparable sales in the valuation of timber subject to tax.[1]

Plaintiff contends that disclosure is required under 5 U.S.C. § 552(a)(2), because the materials sought are "final opinions of an agency," and that the material is not exempt from disclosure under 26 U.S.C. § 6103, because the documents sought are data and statistics, and are covered by the Haskell amendment, 26 U.S.C. § 6103(b)(2).

The matter was submitted on the record and on briefs. Disclosure is ordered.

SUMMARY OF ISSUES

Under the FOIA, the agency has the burden when it contends that requested documents are exempt from disclosure. *Ollestad* v. *Kelly*, 573 F.2d 1109, 1110 (9th Cir. 1978). Accordingly, to prevail, the government must show that:

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[1] Plaintiff's original FOIA request included a request for administrative manuals and instructions relating to timber valuation, and defendants have supplied plaintiff with this material.

1. The material sought is not a "final opinion," within the meaning of 5 U.S.C. § 552(a)(2), *OR*

2. The material sought is not statistics or data within the meaning of the Haskell amendment, *OR*

3. The material sought cannot be edited so as to avoid identifying taxpayers, *OR*

4. The material, after the necessary editing, would be meaningless, *OR*

5. The burden of editing the material would be too high.

The legislative history of the FOIA emphasizes that it is not a withholding statute but a disclosure statute. Uncertainties in the statutory language are to be resolved in favor of disclosure, and exemptions are to be read narrowly. *County of Madison, New York* v. *Department of Justice*, No. 80-1562/1589 (C.A. 1 March 3, 1981).

DISCUSSION

1. *Are the Documents Sought "Final Opinions" under 5 U.S.C. § 552(a)?*

5 U.S.C. § 552(a)(2)(A) provides:

> (a) Each agency shall make available to the public information as follows:
>
> (2) Each agency, in accordance with published rules, shall make available for public inspection and copying—
>
> (A) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

Defendants contend that the engineer's reports sought by plaintiff are not "final opinions," within the meaning of this section. They assert that the en-

gineer's reports, from which the fair market value is determined, are not "final," but only recommendations, subject to agency and to judicial appeal. They rely on *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132 (1975), for the proposition that agency reports which lead to litigation are not final.

Plaintiff correctly challenges the breadth of this assertion. *Sears* held that appeals and advice memoranda, prepared by the NLRB General Counsel, were exempt from the FOIA under exemption five, covering attorney work product. Defendants have not, and could not, claim this exemption, because the material they wish to protect is not attorney work product.

The Court in *Sears* made it clear that this conclusion rested not on the characteristic of "finality" in the document in question, but rather on the attorney work-product exemption:

> We recognize that an Advice or Appeals Memorandum directing the filing of a complaint—although representing only a decision that a legal issue is sufficiently in doubt to warrant determination by another body—has many of the characteristics of the documents described in 5 U.S.C. § 552(a)(2). Although not a "final opinion" in the "adjudication" of a "case" because it does not effect a "final disposition," the memorandum does explain a decision already reached by the General Counsel which has real operative effect—it permits litigation before the Board; and we have indicated a reluctance to construe Exemption 5 to protect such documents. *Supra*, at 153. We do so in this case only because the decisionmaker—the General Counsel—must become a litigating party to the case with respect to which he has made his decision. The attorney's work-product

> policies which Congress clearly incorporated into Exemption 5 thus come into play and lead us to hold that the Advice and Appeals Memoranda directing the filing of a complaint are exempt whether or not they are, as the District Court held, "instructions to staff that affect a member of the public."

421 U.S. at 160.

Unlike the appeals and advice memoranda, the engineer's reports plaintiff seeks are routinely disclosed to taxpayers, either informally or as part of a statutory notice of deficiency. The engineer's report is the agency's final opinion on the valuation of timber. Defendants' expert agreed with plaintiff's expert that the engineer's reports are "final opinions of timber valuation."

Defendants' argument that no opinion can be final which is subject to judicial review must fail. Nearly all agency opinions are subject to judicial review. I find no intent to exclude such orders from the provisions of the Act merely because they are appealable.

2. *26 U.S.C. § 6103: Haskell Amendment's Applicability to the Requested Material.*

Defendants claim that plaintiff's request is exempt from the FOIA under 5 U.S.C. § 552(b)(3), which excludes from disclosure matters:

> specifically exempted from disclosure by statute . . . provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

They contend that 26 U.S.C. § 6013 qualifies as such a statute, *Chamberlain* v. *Kurtz*, 589 F.2d 827, 838-39 n.33 (5th Cir.) *cert. denied*, 444 U.S. 842 (1979), and that it precludes disclosure of the return information sought by plaintiffs.

26 U.S.C. § 6103, in pertinent part, provides:

> § 6103. Confidentiality and disclosure of returns and return information
>
> (a) General rule.—Returns and return information shall be confidential, and except as authorized by this title—
>
> (1) no officer or employee of the United States,
>
> (2) no officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under this section, and
>
> (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (m)(4)(B), or subsection (n),
>
> shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.
>
> b) Definitions—For purposes of this section—
>
> (1) Return.—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required

by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

> but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

Plaintiff agrees that the information it seeks is "return information," but contends that it is "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer"—the Haskell amendment's qualification to section 6103. Defendants contend that the Haskell amendment does not apply because the material sought is not the sort of data covered by the amendment. They argue that the Haskell amendment is aimed only at statistical studies and compilations of data, and that the engineer's reports and private sales information requested by plaintiff do not fit that description. Two cases are helpful on this issue: *Long* v. *U.S. Internal Revenue Service*, 596 F.2d 362 (9th Cir. 1979) *cert. denied*, 446 U.S. 917 (1980), and *Cliff* v. *Internal Revenue Service*, 496 F.Supp. 568 (S.D.N.Y. 1980).

a. *Long*

In *Long*, plaintiffs sought disclosure of information compiled in the IRS Taxpayer Compliance Measurement Program (TCMP). The IRS disclosed their statistical tabulations on the TCMP, but refused to disclose their source material, which consisted of computer data tapes containing all financial data reported on an individual taxpayer return, and check sheets, which, in addition to the financial data, included the taxpayer's name, address, and audit information. Plaintiffs were primarily interested in the data tapes, and asked for check sheets only when necessary to interpret the tapes.

The Ninth Circuit ruled that the IRS must disclose the data. The specific data covered by the Haskell amendment was not directly addressed, but the Court gave a broad reading to the amendment, and said that it "demonstrates a purpose to permit the disclosure of compilations of useful data in circumstances which do not pose serious risks of a privacy breach." *Id.* at 368. The Court declined to limit the scope of the amendment to past agency practices. It referred to Senator Haskell's comment that "the addition by the Internal Revenue Service of easily deletable identifying information to the type of statistical study or compilation of data which under its current practice, has been subject to disclosure, will not prevent disclosure . . . ," and declined to interpret it as a codification of existing IRS practices.

These statements indicate a broad reading of the amendment, with a presumption in favor of disclosure.

b. *Cliff*

In *Cliff*, plaintiff sought IRS staff memoranda discussing the effects of various IRS revenue procedures on the potential or actual tax liability of several specific taxpayers. The Court accepted the IRS argument that the Haskell amendment speaks only to data compilations and statistical surveys rather than information related to particular taxpayers:

> This view finds support in the scanty legislative history of the amendment: its author explained during the Senate's consideration of the provision that its purpose was "to insure that statistical studies and other compilations of data . . . will continue to the [sic] subject to disclosure . . ."

122 *Cong. Rec.* 24012 (1976). The IRS's interpretation is also more consistent with the language of the statute than is Cliff's: the use of the narrow term "data" in the amendment, rather than a broader one such as "records" or "material," when read with the legislative history, is somewhat persuasive; and it is difficult to understand why Congress would have forbidden disclosure of all of the many components of return information, 26 U.S.C. § 6103(b)(2)(A), *supra*, if the simple elimination of the taxpayer's identity would allow such information to be released.

These latter arguments carry the day for the government. Statutory interpretation must begin with analysis of the language adopted by Congress, . . . and the language here suggests both that the Haskell amendment was intended to reach only statistical studies and that Congress did not intend the IRS to have to delete taxpayer identifications from pure return information relating to individual taxpayers. To give the Haskell amendment the interpretation Cliff urges would nullify much of the effect of section 6103 as it relates to return information, the clear purpose of which was to prohibit dissemination of all the types of such information listed in section 6103(b)(2)(A), *supra*. . . .

. . . If Congress had intended to impose such a duty, it simply would have defined return information as information revealing a taxpayer's identity, and required the IRS to delete such information from requested documents whenever feasible.

496 F.Supp. at 573-74.

c. *Cliff and Long Applied*

Plaintiff contends that its data is essentially similar to the data sought in *Long*. It argues that the *Long* data is even more sensitive than the material it seeks, because the *Long* data was taken directly from tax returns, while the engineer's reports and sales data at issue here are independent of the actual returns.

Plaintiff also contends that the *Cliff* interpretation of the Haskell amendment, which distinguished *Long* by reasoning that the data there had been "generated in the production of statistical data," is incorrect.

The data plaintiff seeks here falls in between that in *Cliff* and that in *Long*. Although it is not clear from the opinion, I believe the data in *Long* was amassed in some way before it was placed on the data tapes. In *Cliff* there was a memorandum of a meeting held at the request of a taxpayer, and a memorandum concerning an adjustment of liability based on a revenue proceeding. This comes closer to the sort of material plaintiff in this case requests. The memoranda in *Cliff*, however, were interpretive. The material sought here is more in the nature of data or statistics.

More importantly, however, I think the reasoning of *Cliff* is unpersuasive and overly narrow, given the broad purposes of the FOIA. *Cliff* argues that the use of the word "data" in the amendment demonstrates an intention of narrow interpretation, but the word data is used expansively in § 6103(b)(2)(A)'s definition of return information.

> (A) a taxpayer's identity, . . . *or any other data*, received by, recorded by, ...

Furthermore, under the *Cliff* interpretation, the Haskell amendment would be severely limited, and

the Ninth Circuit in *Long* refused to read the amendment narrowly, because of the liberal purpose of the FOIA. 596 F.2d at 368.

I conclude that the Haskell amendment applies to the data with which we are involved.

3. *Can the Data Be Edited so as to Avoid Identifying, Directly or Indirectly, a Particular Taxpayer*?

An examination of the examples provided by the IRS is necessary.

a. *Defendants' Exhibit W-1A* is the IRS engineer's report prepared to determine the fair market value of plaintiff's timber in calendar years 1971, 1972, and 1973. Plaintiff seeks similar reports prepared on other timber taxpayers in the relevant areas.

Plaintiff contends that by eliminating the name of the timber company from the top of the page, the data sheets will not directly or indirectly identify the taxpayer to which they correspond.

Defendants' expert, Mr. Schrom, testified that even if all references to Willamette Industries were deleted from the exhibit, a knowledgeable person in the timber industry could still identify the taxpayer because of the combination of the tracts of land involved. He conceded that deletion of the volume of timber sold would preclude identification except in one instance.

b. *Exhibit W-1B* contains plaintiff's form T for 1971, and because plaintiff's request did not include form T's, it is not in issue.

c. *Exhibit W-2* is private sales data supplied to the IRS by the plaintiff in the course of an audit, to support its claimed valuations. It qualifies as "return information" under § 6103(b)(2), and defendants contend that it is not the sort of data contemplated

by the Haskell amendment and that it cannot be edited to avoid taxpayer identification.

The Haskell amendment specifically allows disclosure of data from return information, if the requirements are met. As with the engineer's reports, there can be rendered non-identifying by deleting the taxpayer's name, the volume of timber sold and the purchaser.

d. *Exhibit W-3* does not include private sales data or IRS valuations. Plaintiff states that it is not relevant here.

e. *Exhibit W-4* contains timber valuations prepared by the IRS, analyzing particular tracts of land. They are work papers preparatory to the engineer's report. Timber subject to tax is compared on a species by species basis with sales of comparable timber, and then adjusted to reflect differences in log quality and the cost of logging the timber. Again, there is no specific argument, either in the briefs or in the transcript of the hearing, as to whether these can be rendered anonymous. Plaintiff contends that they can be made non-identifying by deleting the name at the top of the page.

Plaintiff says that this file demonstrates the methodology of the IRS in evaluating timber harvested.

4. *Would the Data Sought Be Meaningless after the Necessary Material Was Deleted?*

Defendants contend that the editing necessary to make the documents non-identifying would render them meaningless. This is an unsupported assertion, and there is no expert testimony on this point. Plaintiff contends that even with the deletions, the material in W-1A would be meaningful, because it would show the IRS valuations for timber in a particular area of a particular type, and would allow compari-

son of those values with those offered by the undisclosed taxpayer.

The government has failed to meet its burden of proof on this issue.

5. *Burden on the IRS in Editing the Material Requested.*

The IRS contends that to comply with the search request and editing requirements of this case, a total of 453,934 pages, in 1343 files, would have to be searched, page by page.

I agree with the IRS that the search and deletions will be somewhat burdensome. However, in *Long*, the Ninth Circuit held that deleting identifying information was not an unreasonable burden. And in *Mead Data Cent., Inc.* v. *U.S. Department of Air Force*, 566 F.2d 242 (D.C. Cir. 1977), the Court said that when the data to be deleted was a small portion of the whole, and was "distributed in logically related groupings, the courts should require a high standard of proof for an agency claim that the burden of separation justifies nondisclosure or that disclosure of the nonexempt material would indirectly reveal the exempt information." *Id.* at 261.

From the sample data submitted, it seems that the material to be deleted comes in regular and specific places—the top of the page, for example, and some columns of a page. Deleting this material does not reach the level of burdensomeness contemplated by *Mead Data*.

SUMMARY

All of this data is "return information," as defined in 26 U.S.C. § 6103(b)(2), because it includes "any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with re-

spect to a return or . . . to the determination of . . . liability. . . ."

Although defendants' expert testified that even with deletions, some engineer's reports would be identifying of a particular taxpayer, no detailed explanation was given to support such opinion. Such testimony does not meet the burden of proof on this issue. With deletions of name and volume, the engineer's reports must be disclosed.

There was no expert testimony on the other documents requested. With deletions of name and volume where appropriate, they must be disclosed.

This opinion shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. Rule 52(a).

Plaintiff will prepare a Judgment.

DATED the 28 day of May, 1981.

/s/ Owen M. Panner
OWEN M. PANNER
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Civil No. 78-336-PA

WILLAMETTE INDUSTRIES, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA and JEROME KURTZ, Commissioner of Internal Revenue, DEFENDANTS

[Docketed July 27, 1981]

JUDGMENT

Pursuant to Section 552 of Title 5, United States Code, defendants are hereby ordered to disclose to plaintiff the following documents:

1. Copies of engineer's reports and other final opinions prepared at any time in defendants' Portland, Seattle, Shreveport, New Orleans, and Houston offices in the adjudication of any income, estate or gift tax cases involving the fair market value of timber located in western Oregon or northern Louisiana for tax years ending in 1974, 1975 and 1976, together with the following information associated with those opinions to the extent that such information was determined: the species of timber involved in each case, land values allocations, the fair market value per thousand board feet determined by defendants for each specie, the valuation date, and the specific area in which the subject timber was located. The name of the taxpayer and the total volume of each tract shall be deleted, but the unit values shall be disclosed.

2. Copies of all records in defendants' Portland, Seattle, Shreveport, New Orleans, and Houston offices

relating to the sales of logs, timber, stumpage, or timberlands in western Oregon or northern Louisiana between private parties during the period from June 30, 1973 to June 30, 1976. The name of the taxpayers and the purchasers of the timber shall be deleted. The total volume of timber shall be deleted.

Pursuant to Reg. § 601.701, the defendants are ordered to provide to plaintiff an estimate of the disclosure fees involved in producing the above material.

Dated the 25 day of July, 1981.

/s/ Owen M. Panner
OWEN M. PANNER
United States District Judge

APPENDIX D

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

(a) General Rule.—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (m)(4)(B), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee' includes a former officer or employee.

(b) Definitions.—For purposes of this section—

(1) Return.—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including sup-

porting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any

other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) Taxpayer return information.—The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) Tax administration.—The term "tax administration"—

(A) means—

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and

statistical gathering functions under such laws, statutes, or conventions.

(5) State.—The term "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) Taxpayer identity.—The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) Inspection.—The terms "inspected" and "inspection" means any examination of a return or return information.

(8) Disclosure.—The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) Federal agency.—The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

(c) Disclosure of Returns and Return Information To Designee of Taxpayer.—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a written request for or consent to such dis-

closure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

(d) Disclosure to State Tax Officials.—

(1) In general.—Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such

agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) Disclosure to state audit agencies.—

(A) In general.—Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the purpose of, and only to the extent necessary in, making an audit of the State agency, body, or commission referred to in paragraph (1).

(B) State audit agency.—For purposes of subparagraph (A), the term "State audit agency" means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

(e) Disclosure to Persons Having Material Interest.—

(1) In general.—The return of a person shall, upon written request, be open to inspection by or disclosure to—

(A) in the case of the return of an individual—

(i) that individual,

(ii) if property transferred by that individual to a trust is sold or exchanged in a transaction described in section 644, the trustee or trustees, jointly or separately, of such trust to the extent necessary to ascertain any amount of tax imposed upon the trust by section 644, or

(iii) the spouse of that individual if the individual and such spouse have signified their consent to consider a gift reported on such return as made one-half by him and one-half by the spouse pursuant to the provisions of section 2513;

(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(D) in the case of the return of a corporation or a subsidiary thereof—

(i) any person designated by resolution of its board of directors or other similar governing body,

(ii) any officer or employee of such corporation upon written request signed by any principal offi-

cer and attested to by the secretary or other officer,

(iii) any bona fide shareholder of record owning 1 percent or more of the outstanding stock of such corporation,

(iv) if the corporation was a foreign personal holding company, as defined by section 552, any person who was a shareholder during any part of a period covered by such return if with respect to that period, or any part thereof, such shareholder was required under section 551 to include in his gross income undistributed foreign personal holding company income of such company,

(v) if the corporation was an electing small business corporation under subchapter S of chapter 1, any person who was a shareholder during any part of the period covered by such return during which an election was in effect, or

(vi) if the corporation has been dissolved, any person authorized by applicable State law to act for the corporation or any person who the Secretary finds to have a material interest which will be affected by information contained therein;

(E) in the case of the return of an estate—

(i) the administrator, executor, or trustee of such state, and

(ii) any heir at law, next of kin, or beneficiary under the will, of the decedent, but only if the Secretary finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained therein; and

(F) in the case of the return of a trust—

(i) the trustee or trustees, jointly or separately, and

(ii) any beneficiary of such trust, but only if the Secretary finds that such beneficiary has a material interest which will be affected by information contained therein.

(2) Incompetency.—If an individual described in paragraph (1) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee, or guardian of his estate.

(3) Deceased individuals.—The return of a decedent shall, upon written request, be open to inspection by or disclosure to—

(A) the administrator, executor, or trustee of his estate, and

(B) any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Secretary finds that such

heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

(4) Title 11 cases and receivership proceedings.—If—

(A) there is a trustee in a title 11 case in which the debtor is the person with respect to whom the return is filed, or

(B) substantially all of the property of the person with respect to whom the return is filed is in the hands of a receiver,

such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such trustee or receiver, in his fudiciary capacity, has a material interest which will be affected by information contained therein.

(5) Individual's title 11 case.—

(A) In general.—In any case to which section 1398 applies (determined without regard to section 1398(b)(1)), any return of the debtor for the taxable year in which the case commenced or any preceding taxable year shall, upon written request, be open to inspection by or disclose to the trustee in such case.

(B) Return of estate available to debtor.—Any return of an estate in a

case to which section 1398 applies shall, upon written request, be open to inspection by or disclosure to the debtor in such case.

(C) Special rule for involuntary cases.—In an involuntary case, no disclosure shall be made under subparagraph (A) until the order for relief has been entered by the court having jurisdiction of such case unless such court finds that such disclosure is appropriate for purposes of determining whether an order for relief should be entered.

(6) Attorney in fact.—Any return to which this subsection applies shall, upon written request, also be open to inspection by or disclosure to the attorney in fact duly authorized in writing by any of the persons described in paragraph (1), (2), (3), (4), or (5) to inspect the return or receive the information on his behalf, subject to the conditions provided in such paragraphs.

(7) Return information.—Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

(f) Disclosure to Committees of Congress.—

(1) Committee on Ways and Means, Committee on Finance, and Joint Committee on Taxation.—Upon written request from

the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(2) Chief of Staff of Joint Committee on Taxation.—Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(3) Other committees.—Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a comittee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the

Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

(4) Agents of committees and submission of information to Senate or House of Representatives.—

(A) Committees described in paragraph (1).—Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives,

or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(B) Other committees.—Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only

when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(g) Disclosure to President and Certain Other Persons.—

(1) In general.—Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request. Any such request shall state—

(A) the name and address of the taxpayer whose return or return information is to be disclosed,

(B) the kind of return or return information which is to be disclosed,

(C) the taxable period or periods covered by such return or return information, and

(D) the specific reason why the inspection or disclosure is requested.

(2) Disclosure of return information as to Presidential Appointees and certain other Federal Government appointees.—The Secretary may disclose to a duly authorized representative of the Executive Office of the President or to the head of any Federal agency, upon written request by the President or head of such agency, or to the Federal Bureau of Investigation on behalf of and upon written request by the President

or such head, return information with respect to an individual who is designated as being under consideration for appointment to a position in the executive or judicial branch of the Federal Government. Such return information shall be limited to whether such individual—

(A) has filed returns with respect to the taxes imposed under chapter 1 for not more than the immediately preceding 3 years;

(B) has failed to pay any tax within 10 days after notice and demand, or has been assessed any penalty under this title for negligence, in the current year or immediately preceding 3 years;

(C) has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of any such investigation; or

(D) has been assessed any civil penalty under this title for fraud.

Within 3 days of the receipt of any request for any return information with respect to any individual under this paragraph, the Secretary shall notify such individual in writing that such information has been requested under the provisions of this paragraph.

(3) Restriction on disclosure.—The employees to whom returns and return information are disclosed under this subsection shall not disclose such returns and return information to any other person except the

President or the head of such agency without the personal written direction of the President or the head of such agency.

(4) Restriction on disclosure to certain employees.—Disclosure of returns and return information under this subsection shall not be made to any employee whose annual rate of basic pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

(5) Reporting requirements.—Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the executive branch of the Federal Government at the time such request was made. Reports filed pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the Joint Committee on Taxation

determines that a disclosure to the Congress is necessary.

(h) Disclosure to Certain Federal Officers and Employees for Purposes of Tax Administration, Etc.—

(1) Department of the Treasury.—Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) Department of Justice.—In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) Form of request.—In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection—

(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return the information so requested.

(4) Disclosure in judicial and administrative tax proceedings.—A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) the taxpayer is a party to the proceeding, or the proceeding arose out

of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of return and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) Prospective jurors.—In connection with any judicial proceeding described in paragraph (4) to which the United States

is a party, the Secretary shall respond to a written inquiry from an attorney of the Department of Justice (including a United States attorney) involved in such proceeding or any person (or his legal representative) who is a party to such proceeding as to whether an individual who is a prospective juror in such proceeding has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service. The Secretary shall limit such response to an affirmative or negative reply to such inquiry.

(i) Disclosure to Federal Officers or Employees for Administration of Federal Laws Not Relating to Tax Administration.—

(1) Nontax criminal investigation.—

(A) Information from taxpayer.—A return or taxpayer return information shall, pursuant to, and upon the grant of, an ex parte order by a Federal district court judge as provided by this paragraph, be open, but only to the extent necessary as provided in such order, to officers and employees of a Federal agency personally and directly engaged in and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party.

(B) Application for order.—The head of any Federal agency described in subparagraph (A) or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, may authorize an application to a Federal district court judge for the order referred to in subparagraph (A). Upon such application, such judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(ii) there is reason to believe that such return or return information is probative evidence of a matter in issue related to the commission of such criminal act; and

(iii) the information sought to be disclosed cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act

However, the Secretary shall not disclose any return or return information

under this paragraph if he determines and certifies to the court that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(2) Return information other than taxpayer return information.—Upon written request from the head of a Federal agency described in paragraph (1)(A), or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency personally and directly engaged in, and solely for their use in preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) described in paragraph (1)(A). Such request shall set forth—

(A) the name and address of the taxpayer with respect to whom such return information relates;

(B) the taxable period or periods to which the return information relates;

(C) the statutory authority under which the proceeding or investigation is being conducted; and

(D) the specific reason or reasons why such disclosure is or may be material to the proceeding or investigation.

However, the Secretary shall not disclose any return or return information under this paragraph if he determines that such dis-

closure would identify a confidential informant or seriously impair a civil or criminal tax investigation. For purposes of this paragraph, the name and address of the taxpayer shall not be treated as taxpayer return information.

(3) Disclosure of return information concerning possible criminal activities.—The Secretary may disclose in writing return information, other than taxpayer return information, which may constitute evidence of a violation of Federal criminal laws to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility for enforcing such laws. For purposes of the preceding sentence, the name and address of the taxpayer shall not be treated as taxpayer return information if there is return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal laws.

(4) Use in judicial or administrative proceeding.—Any return or return information obtained under paragraph (1), (2), or (3) may be entered into evidence in any administrative or judicial proceeding pertaining to enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or an agency described in paragraph (1)(A) is a party but, in the case of any return or return information obtained under paragraph (1), only if the court finds that such return or return information is probative of a matter in issue relevant in estab-

lishing the commission of a crime or the guilt of a party. However, any return or return information obtained under paragraph (1), (2), or (3) shall not be admitted into evidence in such proceeding if the Secretary determines and notifies the Attorney General or his delegate or the head of such agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in such proceeding.

(5) Renegotiation of contracts.—A return or return information with respect to the tax imposed by chapter 1 upon a taxpayer subject to the provisions of the Renegotiation Act of 1951 shall, upon request in writing by the Chairman of the Renegotiation Board, be open to officers and employees of such board personally and directly engaged in, and solely for their use in, verifying or analyzing financial information required by such Act to be filed with, or otherwise disclosed to, the board, or to the extent necessary to implement the provisions of section 1481 or 1482. The Chairman of the Renegotiation Board may, upon referral of any matter with respect to such Act to the Department of Justice for further legal action, disclose such return and return information to any employee of such department charged with the responsibility for handling such matters.

(6) Comptroller General.—

(A) Returns available for inspection.—Except as provided in subparagraph (B), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making—

(i) an audit of the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms which may be required by section 117 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 67), or

(ii) any audit authorized by subsection (p)(6).

except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or em-

ployee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(B) Disapproval by Joint Committee on Taxation.—Returns and return information shall not be open to inspection or disclosed under subparagraph (A) with respect to an audit—

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

(j) Statistical Use.—

(1) Department of Commerce.—Upon request in writing by the Secretary of Commerce, the Secretary shall furnish—

(A) such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census, and

(B) such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis,

as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(2) Federal Trade Commission.—Upon request in writing by the Chairman of the Federal Trade Commission, the Secretary shall furnish such return information reflected on any return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of such commission as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, administration by such division of legally authorized economic surveys of corporations.

(3) Department of Treasury.—Returns and return information shall be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities. Such inspection or disclosure shall be permitted only upon written request which sets forth the specific reason or reasons why such inspection or disclosure is necessary and which is signed by the head of the bureau or office of the Department of the Treasury requesting the inspection or disclosure.

(4) Anonymous form.—No person who receives a return or return information under this subsection shall disclose such return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(k) Disclosure of Certain Returns and Return Information for Tax Administration Purposes.—

(1) Disclosure of accepted offers-in-compromise. — Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

(2) Disclosure of amount of outstanding lien.—If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

(3) Disclosure of return information to correct misstatements of fact.—The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with

respect to such taxpayer's return of any transaction of the taxpayer with the Internal Revenue Service.

(4) Disclosure to competent authority under tax convention.—A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention or other convention relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention.

(5) State agencies regulating tax return preparers.—Taxpayer identity information with respect to any income tax return preparer, and information as to whether or not any penalty has been assessed against such income tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of income tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of income tax return preparers.

(6) Disclosure by internal revenue officers and employees for investigative purposes.—An internal revenue officer or em-

ployee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

(l) Disclosure of Returns and Return Information for Purposes Other Than Tax Administration.—

(1) Disclosure of certain returns and return information to Social Security Administration and Railroad Retirement Board.—The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return

information described in section 6057 (d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) Disclosure of returns and return information to the Department of Labor and Pension Benefit Guaranty Corporation.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) Disclosure of returns and return information to Privacy Protection Study Commission.—The Secretary may, upon written request, disclose returns and return information to the Privacy Protection Study Commission, or to such members, officers, or employees of such commission as may be named in such written request, to the extent provided under section 5 of the Privacy Act of 1974.

(4) Disclosure of returns and return information for use in personnel or claimant representative matters.—The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the

Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 3 of the Act of July 7, 1884 (23 Stat. 258; 31 U.S.C. 1026),

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) Department of Health, Education, and Welfare.—Upon written request by the Secretary of Health, Education, and Welfare, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursunt to

section 232 of the Social Security Act, an effective return processing program.

(6) Disclosure of return information to Federal, State, and local child support enforcement agencies.—

(A) Return information from Internal Revenue Service.—The Secretary may, upon written request, to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only

if such return information is not reasonably available from any other source.

(B) Restriction on disclosure.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(B) Disclosure to educational institutions, etc.—

Any mailing address disclosed under subparagraph (A)(i) may be disclosed by the Secretary of Education to—

(i) any lender, or any State or nonprofit guarantee agency, which is participating under part B of title IV of the Higher Education Act of 1965, or

(ii) any educational institution with which the Secretary of Education has an agreement under part E of title IV of such Act,

for use only by officers, employees or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

(n) Certain Other Persons.—Pursuant to regulations prescribed by the Secretary, returns and

return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration.

(o) Disclosure of Returns and Return Information With Respect to Certain Taxes.—

(1) Taxes imposed by subtitle E.—Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.

(2) Taxes imposed by chapter 35.—Returns and return information with respect to taxes imposed by chapter 35 (relating to taxes on wagering) shall, notwithstanding any other provision of this section, be open to inspection by or disclosure only to such person or persons and for such purpose or purposes as are prescribed by section 4424.

(p) Procedure and Recordkeeping.—

(1) Manner, time, and place of inspections.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) Procedure.—

(A) Reproduction of returns.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) Disclosure of return information.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) Use of reproductions.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) Records of inspection and disclosure.—

(A) System of recordkeeping.—Except as otherwise provided by this par-

agraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (j)(4) or (6)(A)(ii), (K)(1), (2), or (6), (*l*)(1), (4)(B), (5), (7), or (8), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552(c)(3) of title 5, United States Code.

(B) Report by the Secretary.—The Secretary shall, within 90 days after the close of each calendar year, furnish

to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) Public report on disclosures.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d) or (*l*)(3) or (6),

and the General Accounting Office the number of—

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursaunt to such requests, and

(ii) describes the general purposes for which such requests were made.

(4) Safeguards.—Any Federal agency described in subsection (h)(2), (i)(1), (2) or (5), (j)(1) or (2), (l)(1), (2) or (5), or (o)(1), the General Accounting Office or any agency, body, or commission described in subsection (d) or (*l*)(3), (6), (7), or (8) shall as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored,

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d) or (*l*)(6), (7), or (8), return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in

any manner and furnish a written report to the Secretary describing such manner; and

(ii) in the case of an agency described in subsections (h)(2), (i)(1), (2), or (5), (j)(1) or (2), (l)(1), (2), or (5), or (o)(1), the commission described in subsection (l)(3), or the General Accounting Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise made such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information,

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Of-

fice has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met.

(5) Report on procedures and safeguards.—After the close of each calendar quarter, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions and the General Accounting Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) Audit of procedures and safeguards.—

(A) Audit by Comptroller General.—The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall

notify the Secretary before any such audit is conducted.

(B) Records of inspection and reports by the Comptroller General.—The Comptroller General shall—

(i) maintain a permanent system of standardized records and accounting of returns and return information inspected by officers and employees of the General Accounting Office under subsection (i)(6)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Sercetary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) Administrative review.—The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to

meet the requirements of such paragraph.

(8) State law requirements.—

(A) Safeguards.—Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

"(B) Disclosure of returns or return information in state returns.—Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

(q) Regulations.—The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section.

SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) Returns and Return Information.—

(1) Federal employees and other persons—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction of such offense.

(2) State and other employees.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (*l*)(b), (7), or (8), or (m)(4) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons.—It shall be unlawful for any person to whom any return or return infor-

mation (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both together with the costs of prosecution.

(4) Solicitation.—It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years or both, together with the costs of prosecution.

(5) Shareholders.—It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of Operations of Manufacturer or Producer.—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the oper-

ations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) Disclosures by Certain Delegates of Secretary. —All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

SEC. 7431. CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) In General.—

(1) Disclosure by employee of United States.—If any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Disclosure by a person who is not an employee of United States.—If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) No Liability For Good Faith but Erroneous Interpretation.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.

(c) Damages.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) $1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus

(ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action.

(d) Period for Bringing Action.—Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized disclosure.

(e) Return: Return Information.—For purposes of this section the terms "return" and "return information" have the respective meanings given such terms in section 6103(b).

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No. 82-1322

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA AND ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE, *Petitioners*

v.

WILLAMETTE INDUSTRIES, INC., *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Ninth Circuit was correct in affirming a district court ruling that neither the Freedom of Information Act (5 U.S.C. §552) nor §6103 of the Internal Revenue Code (26 U.S.C. §6103) prohibits the disclosure of Internal Revenue Service timber valuation documents, where the documents have been determined by those courts to constitute compilations of data that pose no risk of identification of any taxpayers.

PARTIES TO THE PROCEEDINGS

The subsidiaries and affiliates of respondent Willamette Industries, Inc., are: Freres Veneer Company; Santiam Southern Company; Taylor Development Company, Inc.; W. I., Inc.; and Wimer Logging Co.

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STATEMENT OF THE CASE

This case involves a Freedom of Information Act request submitted to the Internal Revenue Service in which the respondent requested disclosure of two types of documents. The first type of documents consisted of timber valuation reports prepared by the Internal Revenue Service in income, estate and gift tax cases. The second type of documents consisted of data relating to timber sale transactions.

Respondent is a publicly held producer of wood and paper products that, like all other large corporations, is subject to annual audit by the Internal Revenue Service. A perennial issue is the fair market value of timber cut by respondent which qualifies for capital gain treatment under Section 631(a) of the Internal Revenue Code (26 U.S.C. §631(a)). In recent years, the volume of timber valuation and other valuation cases in the federal courts has risen dramatically, partly due to unreasonable bargaining positions taken by one or both parties in hopes that the courts will "split the difference" between the taxpayer position and the position of the Internal Revenue Service, e.g., *Willamette Industries, Inc., et al.* v. *Commissioner*, 1980 Tax Court Memorandum Decision No. 577; *Buffalo Tool and Die Manufacturing Co., Inc.*, v. *Commissioner*, 74 T.C. 441, 451-452 (1980).

By gaining access to valuation opinions issued by the Internal Revenue Service ("IRS") in other cases, and in being able to review timber sales data used by the IRS as comparable sales in formulating those opinions, the respondent is hoping to remove the cloud of secrecy that now surrounds IRS valuation procedures. It is generally agreed that "fair market value" of timber (or any other asset) should be the same for income, estate and gift tax purposes. By having access to the requested data, the respondent hopes to determine if the IRS valuations are being made scientifically and applied uniformly and consistently, or whether those decisions are based on

guesswork or bias and then inconsistently applied. The ultimate goal is to reduce the volume of tax litigation through the application of consistent valuation techniques.

The initial Freedom of Information Act ("FOIA") request was denied administratively, and this suit was brought. In the district court, the IRS attempted to show that the 1976 Haskell Amendment (26 U.S.C. §6103(b)(2)) did not apply to the requested documents and that the documents posed a risk of identifying other taxpayers. Based on testimony and an affidavit of an Internal Revenue Service forester, depositions of three IRS foresters, and sample documents submitted by the IRS, the district court held that the documents should be disclosed to the respondent after removal of taxpayer names and timber volumes. In so doing, the district court found as a fact that the documents did constitute "data" within the purview of the Haskell Amendment, and further found as a fact that the government had failed to meet its burden of proof that the edited documents might indirectly identify taxpayers (Pet. App. 22a and 24a).

The government appealed. The Court of Appeals for the Ninth Circuit, after making its own review of the sample documents (Pet. App. 7a), affirmed the district court's ruling. The Ninth Circuit specifically held that the information "is in effect compilations of data" (Pet App. 9a) and that the risk of indirect identification was unproven or nonexistent (Pet. App. 6a-7a).

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied because no conflict exists between the decision below and the decision of the Seventh Circuit in *King* v. *Internal Revenue Service*, 688 F.2d 438 (1982).

The requested documents in the *King* case were so narrowly defined as to limit the documents to those pertaining to one particular taxpayer. As a result, taxpayer identification was certain. In the present case, the documents pertain to an entire industry, and both the district court and the court of appeals found that the government failed to demonstrate any risk of taxpayer identification.

Both of the lower courts in the present case also determined that the requested documents constituted "data" as that term is used in the Haskell Amendment to the Internal Revenue Code, 26 U.S.C. §6103 (b) (2), and also found that the documents constituted "compilations of data" as that phrase is used in the legislative history of the Haskell Amendment.

Since the *King* decision involved documents that posed a clear risk of taxpayer identification, and did not involve "data" or "compilations of data", we submit that the decision below is not in conflict with *King*. In the present case, the government failed to show a risk of identification, failed to show that the documents did not consist of data, and is now asking the Supreme Court to review the purely factual findings of the courts below.

ARGUMENT

The government has attempted to demonstrate a conflict between the decision below and the recent decision of the Court of Appeals for the Seventh Circuit in *King* v. *Internal Revenue Service*, 688 F.2d 488 (1982). In fact, no such conflict exists. Although the government contends (Pet. 7) that the documents in *King* are "virtually identical" to the documents at issue here, the two sets of documents have no similarities whatsoever.

The documents in *King* consisted of eight specific documents, all of which apparently pertained to one particular taxpayer. Described in the *King* request were correspondence and IRS audit documents pertaining to that particular taxpayer, including photographs of utility trucks owned by the taxpayer (688 F.2d at 491). The Seventh Circuit, relying in part on the obvious risk of identification of the taxpayer, ruled that the FOIA did not require disclosure.

In contrast, the decision below involved compilations of timber sales data and timber value determinations on an industry-wide basis. Unlike the documents in *King*, the scope of documents requested in the present case was not so limited as to be deliberately restricted to one specific taxpayer.

The government argues (Pet. 12) that the decision below would enable a party to prepare a FOIA request that was so carefully narrowed that particular taxpayers would be directly or indirectly identified.

The government's argument is simply incorrect. In the present case, both the district court and the Ninth Circuit specifically examined the potential risk of identification and found that the government failed to demonstrate the presence of any such risk. If future requests are presented, similar inquiries will be made, and narrow requests that pose identification risks will be rejected, as the Seventh Circuit opinion in *King* demonstrates.

The government also argues (Pet. 12) that neither a court nor the Internal Revenue Service is in a position to appraise whether a party making a FOIA request could use the requested material to identify other taxpayers. As the Ninth Circuit observed in the present case, that argument "is too speculative and not supported by facts." (Pet. App. 7a). In addition, that argument is contradictory, since it would leave to the IRS the sole responsibility for making that decision which the government contends the IRS is not capable of making. Moreover, the argument contradicts the statutory provision that the agency must bear the burden of proving that particular documents are exempt from the broad reach of the FOIA. 5 U.S.C. §552(a)(4)(B); *Ollestad v. Kelly*, 573 F.2d 1109, 1110 (9th Cir., 1978).

The government's discussion of the issue of indirect identification also misstates the facts of this case. Contrary to the government's phrasing of the question presented, and contrary to a statement made on page 7 of the petition, the district court held, and

the Ninth Circuit affirmed, that the government failed to carry its burden of proof as to whether the requested documents presented a risk of identifying any particular taxpayers. The district court held that, despite broad assertions regarding the danger of indirect identification, "no detailed explanation was given to support such opinion. Such testimony does not meet the burden of proof on this issue." (Pet. App. 25a). The Ninth Circuit affirmed this finding when it stated that "no specific evidence was given as to how often this danger of indirect identification might exist." (Pet. App. 6a). The court of appeals then went so far as to review the sample documents itself, and stated "Our review of the private sales data compilations shows that there is little danger of such indirect identification from the edited form." (Pet. App. 7a).

Despite these findings by the lower courts, the government's petition describes the risk of identification as if it were an established fact. Unlike the clear risk of identification present in *King*, the documents requested here present no such risk. In effect, the government is not asking this Court to review conflicting legal positions adopted by two circuits, but instead is asking this Court to supervise the fact-finding role of the federal district court, a duty that has already been performed in this case by the Court of Appeals for the Ninth Circuit.

On this purely factual issue of risk of identification, this case presents a situation in which the gov-

ernment simply failed to carry its burden of proof in the trial court.

The government's petition also misconstrues the legal issues involved in the present case, in *King*, and in *Long v. Internal Revenue Service*, 596 F.2d 362 (9th Cir., 1979), cert. denied, 446 U.S. 917 (1980). In its attempt to emphasize an alleged conflict between the Seventh and Ninth Circuits, the government first argues that the *King* decision restricts the application of the Haskell Amendment to statistical studies and compilations of data. The government then argues that the decisions of the Ninth Circuit in the present case and in *Long* permit the disclosure of *any* document as long as identifying material is deleted. An examination of the opinions in this case and in *Long* shows that the government's alleged conflict does not exist.

The *Long* case dealt with information gathered in the IRS Taxpayer Compliance Measurement Program ("TCMP"), which the *Long* court described as "a continuing series of statistical studies" (596 F.2d at 364). In addition to authorizing the release of the TCMP statistical studies, the Ninth Circuit ruled that the source data for the studies should also be released. Thus the court merely approved the release of statistical studies and compilations of source data. The court did not approve the indiscriminate release of return information, nor did it express the view that *any* information could be released if properly edited.

The documents involved in the present case are

similar to the documents involved in *Long*. In the present case, the district court reviewed the sample exhibits and concluded that "the material sought here is more in the nature of data or statistics" (Pet. App. 21a) as opposed to individual memoranda and other interpretive material such as that involved in *Cliff* v. *Internal Revenue Service*, 496 F. Supp. 568 (S.D.N.Y., 1980). The Ninth Circuit did not simply rely on that conclusion of the trial court here, but made its own inspection of the sample documents (Pet. App. 7a) and concluded that "the information involved in this case is in effect compilations of data" (Pet. App. 9a).

This factual finding by the district court and by the Ninth Circuit contradicts any allegations by the government that the present case is in conflict with the *King* decision, since a finding that the documents are compilations of data brings the documents within the interpretation of the Haskell amendment urged by the government in this case and approved by the Seventh Circuit in *King*. In other words, if presented with the facts in the present case, the *King* court would have reached the same result that the government is now asking this Court to review.

CONCLUSION

Since no conflict exists between the circuits, and since the petition presents no other "special and important reasons" (Rule 17.1) for granting the petition, the petition should be denied.

Respectfully submitted,

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No. 82-1322

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UNITED STATES OF AMERICA AND
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v.

WILLAMETTE INDUSTRIES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

In its brief in opposition, respondent asserts that: (1) we seek review in this case to correct a factual finding by the court below; (2) the documents it seeks are compilations of data in any event and therefore not barred from disclosure even under our interpretation of Section 6103 of the Internal Revenue Code of 1954 (26 U.S.C.); and (3) the decision below does not conflict with *King* v. *IRS*, 688 F.2d 488 (7th Cir. 1982). None of these arguments withstands analysis.

1. The issue presented in this case is a pure question of law. Even if the court of appeals were correct that the return information sought by respondent is non-identifying once it is edited, the disclosure of such information is barred as a matter of law by the plain language of Section 6103. In our view, no one can obtain access to raw return information

unless Section 6103 specifically allows such a disclosure *or* the raw return information is changed in form, by amalgamation into statistical data, and, even in this new form, cannot identify a particular taxpayer.

Contrary to respondent's characterization of our argument (Br. in Opp. 7), we do not seek review of the so-called "factual finding" that the return information in this case is non-identifying, once it is edited. Our position, accepted by the Seventh Circuit in *King*, finds support in the fact that neither the courts nor the Internal Revenue Service can adequately assess the risk of identification of return information on an ad hoc basis. Accordingly, Section 6103 alone should regulate access to return information, and the Haskell Amendment (26 U.S.C. (& Supp. V) 6103(b)(2)) to this statute, permits disclosure only of "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer," a statutory phrase that excludes raw return information. *King* did not hold, as respondent suggests (Br. in Opp. 4-5), that the documents in issue there were nondisclosable because there was a risk of identification. Rather, the court held that that raw return information is per se nondisclosable as a matter of law because editing can never guarantee the absence of such a risk.

2. Respondent further contends (Br. in Opp. i, 5, 8-9) that our interpretation of the Haskell Amendment was sustained in fact because the court of appeals found the return information at issue to be a "compilation of data" (Pet. App. 9a). But this is not the case. The return information sought by respondent has been held disclosable by the decision below in its pure, raw form. There has been no amalgamation of the various facts regarding tract size, kind of timber, sales price, etc., into new statistics. All the specific details of indivdiual sales would be available to respondent as discrete, separate sets of information. It is

only because respondent sought return information drawn from multiple sources that the court below posited its alternative holding that there was a "compilation of data" here (Pet. App. 9a). That sort of "compilation" nevertheless leaves the return information in a raw form, and discloure of it is contrary to Section 6103. The court of appeals' fundamental error was its assumption that the statutory term "data in a form" is equivalent to raw return information. In our view, raw return information can become "data" when it is amalgamated with other return information to produce a new and distinct statistical body of information.

3. Finally, respondent argues (Br. in Opp. 8-10) that there is no conflict between this case, which relies upon *Long* v. *IRS*, 596 F.2d 362 (9th Cir. 1979), cert. denied, 446 U.S. 917 (1980), and the decision in *King*. But the court in *King* effectively refuted this contention. In reversing the district court which had likewise relied on *Long* (49 A.F.T.R.2d 839, 841 (N.D. Ill. 1981)), the Seventh Circuit in *King* explicitly acknowledged the conflict. It stated (688 F.2d at 488 n.*):

> Because this opinion creates a conflict with the opinions of the Ninth and District of Columbia Circuits in *Long v. I.R.S.*, 596 F.2d 362 (9th Cir. 1979), *cert. denied*, 446 U.S. 917, 100 S. Ct. 1851, 64 L. Ed. 2d 271 (1980), and *Neufeld v. I.R.S.*, 646 F.2d 661 (D.C. Cir. 1981), it was circulated under Circuit Rule 16(e) to all active judges, with the exception of Circuit Judge Cudahy, who did not participate in consideration of the opinion. No judge requested a rehearing *en banc*.

Thus, *King* adopts a legal test regarding disclosure of return information that is directly opposed to the test adopted by the Ninth Circuit here and in *Long* and by the District of Columbia Circuit in *Neufeld*. As we have noted (Pet. 8-9), the decision below threatens to compromise the

special confidentiality accorded by Section 6103 to the information provided by many millions of taxpayers. Section 6103 does not apply an "apparent risk of identification" test for disclosure. To the contrary, it demands that no raw return information be disclosed except pursuant to its limited and detailed provisions. Accordingly, respondent has no right to this personal return information simply because there "appears" to be no risk of identification.[1]

CONCLUSION

For the reasons stated above and in our petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

REX E. LEE
Solicitor General

MARCH 1983

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[1]Respondent attempts to characterize its FOIA suit as vindicating a public purpose of disclosing "valuation opinions" by the IRS (Br. in Opp. 2-3). There is, however, nothing confidential about Internal Revenue Service valuation practices. The manual regarding such practices was provided to respondent (Pet. App. 12a n.1).

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